

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:19-cv-12379-DJC**

Mullane v. Department of Justice et al
Assigned to: Judge Denise J. Casper
Demand: \$9,999,000
Cause: 05:552 Freedom of Information Act

Date Filed: 11/19/2019
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

Mr. Jonathan Mullane

represented by **E. Peter Mullane**
Mullane, Michel & McInnes
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Cambridge, MA 02138-5736
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

United States Department of Justice

represented by **Jason C. Weida**
US Attorney's Office – MA
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1 Courthouse Way
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TERMINATED: 01/22/2020
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Defendant

**United States Securities and Exchange
Commission**

represented by **Jason C. Weida**
(See above for address)
TERMINATED: 01/22/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael P. Sady
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
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11/19/2019	<u>1</u>	COMPLAINT against All Defendants Filing fee: \$ 400, receipt number 0101-7978825 (Fee Status: Filing Fee paid), filed by Jonathan Mullane. (Attachments: # <u>1</u> Exhibit Exhibits, # <u>2</u> Civil Cover Sheet, # <u>3</u> Category Form)(Mullane, E. Peter) (Entered: 11/19/2019)
11/20/2019	<u>2</u>	ELECTRONIC NOTICE of Case Assignment. Judge Denise J. Casper assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Marianne B. Bowler. (Finn, Mary) (Entered: 11/20/2019)
11/20/2019	<u>3</u>	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Burgos, Sandra) (Entered: 11/20/2019)
11/26/2019	<u>4</u>	AFFIDAVIT OF SERVICE Executed by Jonathan Mullane. All Defendants. Acknowledgement filed by Jonathan Mullane. (Mullane, E. Peter) (Entered: 11/26/2019)
12/30/2019	<u>5</u>	NOTICE by Jonathan Mullane <i>Related Proceeding</i> (Mullane, E. Peter) (Entered: 12/30/2019)
12/30/2019	<u>6</u>	Assented to MOTION for Extension of Time to January 17, 2020 to File Answer re <u>1</u> Complaint, by United States Department of Justice, United States Securities and Exchange Commission.(Weida, Jason) (Entered: 12/30/2019)
12/31/2019	<u>7</u>	Judge Denise J. Casper: ELECTRONIC ORDER entered granting <u>6</u> Motion for Extension of Time to Answer re <u>1</u> Complaint, All Defendants 1/17/20. (Hourihan, Lisa) (Entered: 12/31/2019)
01/03/2020	<u>8</u>	Notice of Related Proceeding (Mullane, E. Peter) Modified on 1/7/2020 (McKillop, Matthew). (Entered: 01/03/2020)
01/17/2020	<u>9</u>	NOTICE of Appearance by Michael P. Sady on behalf of United States Department of Justice, United States Securities and Exchange Commission (Sady, Michael) (Entered: 01/17/2020)
01/17/2020	<u>10</u>	ANSWER to Complaint by United States Department of Justice, United States Securities and Exchange Commission.(Sady, Michael) (Entered: 01/17/2020)
01/21/2020	<u>11</u>	NOTICE of Scheduling Conference Scheduling Conference set for 2/24/2020 02:30 PM in Courtroom 11 before Judge Denise J. Casper. (Hourihan, Lisa) (Entered: 01/21/2020)
01/21/2020	<u>12</u>	NOTICE of Withdrawal of Appearance by Jason C. Weida (Weida, Jason) (Entered: 01/21/2020)
02/20/2020	<u>13</u>	Proposed JOINT SUBMISSION pursuant to Local Rule 16.1 by Jonathan Mullane.(Mullane, E. Peter) (Entered: 02/20/2020)
02/21/2020	<u>14</u>	CERTIFICATION pursuant to Local Rule 16.1 . (Sady, Michael) (Entered: 02/21/2020)
02/21/2020	<u>15</u>	MOTION for Discovery <i>Vaughn Index</i> by Jonathan Mullane. (Attachments: # <u>1</u> Exhibit Authority)(Mullane, E. Peter) (Entered: 02/21/2020)
02/21/2020	<u>16</u>	CERTIFICATION pursuant to Local Rule 16.1 <i>Plaintiff's Certification</i> . (Mullane, E. Peter) (Entered: 02/21/2020)
02/24/2020	<u>17</u>	Electronic Clerk's Notes for proceedings held before Judge Denise J. Casper: Scheduling Conference held on 2/24/2020. Court hears from counsel. Court takes matter under advisement. (Court Reporter: Debra Joyce at joycedebra@gmail.com.)(Attorneys present: E. Peter Mullane for the plaintiff. Michael Sady for the defendants.) (Hourihan, Lisa) (Entered: 02/25/2020)
02/27/2020	<u>18</u>	Judge Denise J. Casper: ELECTRONIC ORDER entered re: <u>15</u> Motion for Discovery. Motion for <u>Vaughn</u> index is DENIED without prejudice. The Court consider Plaintiff's motion in conjunction with the parties' conflicting views about whether discovery is warranted here given the nature of Plaintiff's claims and, if warranted, the timing of

		<p>same. Here Plaintiff Jonathan Mullane brings a claim under the Privacy Act (Count I) and a claim under FOIA (Count II) against Defendants U.S. Department of Justice ("DOJ") and U.S. Securities and Exchange Commission ("SEC"). D. 1 at 7–9.</p> <p>Although arising under different statutes, Mullane's allegation under both counts is that these agencies unlawfully withheld records responsive to his Privacy Act and FOIA requests. As discussed with counsel at Monday's initial scheduling conference, and as reflected in case law, "discovery is not typically a part of FOIA and Privacy Act cases" and "whether to permit discovery is within the sound discretion of the district court judge." <u>Broadrick v. Executive Office of President</u>, 139 F. Supp. 2d 55, 63 (D.D.C. 2001) <u>and cases cited</u>. The cases cited by Plaintiff do not persuade the Court otherwise and some support the sequencing that the Court was contemplating at the initial scheduling conference. <u>See, e.g., Scarborough v. Harvey</u>, 493 F. Supp. 2d 1, 18 (D.D.C. 2007) (considering the defendants' partial motion for summary judgment as to the Privacy Act claim where, in opposition to same, plaintiffs had moved for discovery under Fed. R. Civ. P. 56(f), now Rule 56(d)). Given the nature of Plaintiff's claims and the schedule that the Court will otherwise adopt here, the Court DENIES Plaintiff's motion without prejudice. (Hourihan, Lisa) (Entered: 02/27/2020)</p>
02/27/2020	19	<p>Judge Denise J. Casper: ELECTRONIC ORDER entered D. 13,14: Having considered the parties' respective scheduling proposals, having heard the defense's update regarding the production of additional documents to Plaintiff's request and having denied Plaintiff's motion for <u>Vaughn</u> index without prejudice, the Court ORDERS the following schedule:</p> <p>1. As the defense indicated that Defendant DOJ was in the process of producing additional responsive documents, it shall do so on a rolling basis to Plaintiff and shall give the Court an update regarding same on or before April 27, 2020;</p> <p>2. Any motion for summary judgment shall be filed by June 26, 2020. Any supporting memoranda and affidavits shall be filed with the motion and shall include a <u>Vaughn</u> index correlating any withheld documents to particular exemptions. <u>See N.H. Right to Life v. U.S. Dept. of Health and Human Servs.</u>, 778 F.3d 43, 48 & n.3 (1st Cir. 2015). Opposition to same shall be due by July 27, 2020. If in opposing any motion for summary judgment, "the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition," it may seek relief under Fed. R. Civ. P. 56(d).(Hourihan, Lisa) (Entered: 02/27/2020)</p>
06/24/2020	<u>21</u>	<p>Assented to MOTION for Extension of Time to 7/10/20 to File Motion for Summary Judgment by United States Department of Justice, United States Securities and Exchange Commission.(Sady, Michael) (Entered: 06/24/2020)</p>
07/03/2020	<u>23</u>	<p>MOTION for Leave to File <i>Verified First Amended Complaint</i> by Jonathan Mullane. (Attachments: # <u>1</u> Exhibit Proposed Verified First Amended Complaint)(Mullane, E. Peter) (Entered: 07/03/2020)</p>